

In re Patent Application of Brockman
Serial No. 10/760,445

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Remarks

The Office Action has been carefully reviewed and this amendment is prepared in view of the Examiner's comments in an effort to put the rejected claims in condition for allowance.

Applicant thanks the Examiner for her work in connection with the application.

Applicant notes with appreciation the Examiner's statement that claims 1-20 contain allowable subject matter. The remaining claims are amended to overcome the rejections, including to patentably distinguish applicant's unique invention over the prior art. More specifically, as pointed out below, independent claims 21 and 26 are rewritten to overcome the rejections. Claim 27 is withdrawn without prejudice to facilitate prosecution, and the dependency of claim 28 is adjusted. The Examiner objected to claim 23 because of a formality. Corrective action has been taken as indicated above. In responding to some assertions made by the Examiner, applicant points out in detail how certain minor specification amendments were fully appropriate and not new matter. This amendment and the following remarks are believed to be fully responsive to the Office Action, and place this application in condition for allowance. Reconsideration and withdrawal of the claim objection and rejections is respectfully requested.

The Examiner objected to the specification under 35 USC 132(a) asserting that term substitution of "substantially transverse" for "generally perpendicular" on page 5 of the specification was new matter. Applicant points that all of the original figures, and particularly Figures 1, 3 and 4B, show that the substitution of terms was merely a matter of amending the specification to conform the wording to the clear disclosure. In other words, the application as originally filed showed the dislodging rods 60 to be transverse to the direction of movement, and not necessarily perpendicular thereto. The swept-back configuration of the illustrated rods is very clear in the original disclosure. Applicant contends that the words "substantially transverse" are fully supported in the application as filed. Therefore, applicant respectfully requests the Examiner withdraws this objection.

Claims 21-25 were rejected under 35 USC 112, first paragraph, on grounds that the claims failed to comply with the enablement requirement. More specifically, the Examiner stated: "Nowhere in the specification does it disclose a plurality of dislodging rods positioned in

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a single plane that is substantially transverse to the field surface. The specification, as seen in Figure 1, discloses dislodging rods positioned in a single plane that is parallel to the field surface and not transverse to the field surface."

Applicant agrees, and notes that an editing error in the wording of previously amended claim 21 caused the problem. Independent claim 21 is now amended to overcome this problem. The corrective amendment of claim 21 places claims 21-25 in condition for allowance.

Claim Rejections Under 35 USC 102

Claim 26 was rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 881,039 (Young). Claim 26 has now been amended and to be patentably distinguishable over Young and is now in condition for allowance. The Examiner asserted Young discloses a method of harvesting cranberries including moving frame mounted dislodging rods over cranberry plants at the speed of the frame. Further, the Examiner stated the dislodging rods have a free end and are mounted by springs to the frame. Finally, in rejecting claim 26, the Examiner asserted the dislodging rods are oriented transverse to the direction of movement of the frame. Applicant respectfully disagrees with the rejection of these claims for the reasons stated below.

Young does not disclose frame-mounted transverse dislodging rods that are positioned substantially horizontally transverse to the direction of movement of the frame. To begin, Young does not disclose dislodging rods as in the claimed invention, but rather "blades" and "cutting blades" for use in pruning vines. Such "blades" are "semi-circle in form, with its upper section unchanged from the cylindrical shape of the steel rod from which it is made, and the blade-section extending for substantially one-third or two-fifths of the length." Column 1, lines 42-47.

Moreover, Young does not disclose dislodging rods that are positioned substantially horizontally transverse to the direction of movement of the frame. In fact, Young does not disclose the manner in which the "blades" are positioned with respect to movement of the frame. It is, however, apparent from the figures in Young that the blades are not positioned substantially horizontally transverse to the direction of movement of the frame. In fact, assuming *arguendo* the blades can be considered transverse at all, they are *vertically* transverse to the direction of movement of the frame. Because the blades in Young are not akin to the claimed dislodging rods

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and they are not positioned substantially horizontally transverse to the direction of movement, claim 26 is not anticipated by Young.

Claim Rejections Under 35 USC 103

Finally, claim 28 was rejected under 35 USC 103 as being unpatentable over Young in view of U.S. Patent No. 2,544,443 (Brateng). Because the rejection of claim 26 has been traversed, applicant respectfully requests that claim 28, from which it depends, be allowed.

Conclusion

Applicant believes that the above-noted amendments and remarks resolve the rejections asserted in the April 14, 2005, Office Action and render the application in a condition for allowance. Applicant requests early and favorable action. The Examiner is invited to call the undersigned attorney if that would be helpful in resolving any matter which might remain.

Respectfully submitted,



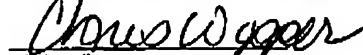
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the following documents: (1) Transmittal Letter; (2) Amendment Transmittal Letter; (3) Amendment all involving Serial No. 10/760,445 are being facsimile transmitted to Examiner Meredith C. Petravick, Group Art Unit 3671 at the U.S. Patent and Trademark Office, facsimile no. 703/872-9306, on July 14, 2005.


Chris Wipper